

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ALCOA, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-383-SLR
)	
ALCAN INC., a Canadian corporation, ALCAN)	
CORP., a Texas corporation, ALCAN CORP., a)	
Delaware corporation, PECHINEY, S.A., a)	
French corporation, ALCAN RHENALU, a)	
French corporation, ALCAN PECHINEY)	
CORP., a Texas corporation, PECHINEY)	
METALS, LLC, a Delaware limited liability)	
company, ALCAN ROLLED PRODUCTS –)	
RAVENSWOOD, LLC, a Delaware limited)	
liability company,)	
)	
Defendants.)	

**DEFENDANTS’ MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED**

1. Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Alcan Inc., Alcan Corp. (Texas), Alcan Corp. (Delaware), Pechiney, S.A., Alcan Rhenalu, Alcan Pechiney Corp., Pechiney Metals, LLC, and Alcan Rolled Products – Ravenswood, LLC, (collectively, “Alcan”), respectfully request that Alcoa, Inc.’s (“Alcoa’s”) Complaint be dismissed for failure to state a claim upon which relief can be granted.

2. Alcoa’s Complaint contains two counts, one for infringement and one for active inducement to infringe. In Count One, Alcoa alleged that Alcan infringed one or more of the claims of United States Patent No. 5,213,639 (the “639 patent”) in violation of 35 U.S.C. § 271(a) by preparing to sell an alloy registered as the “2056” alloy. In Count Two, Alcoa alleged that Alcan actively induced infringement in violation of 35 U.S.C. § 271(b) by preparing

to offer the 2056 alloy to foreign aircraft manufacturers with knowledge that the alloy likely will be used to make aircraft sold in the United States.

3. Alcoa has not stated a claim for relief under 35 U.S.C. § 271(a) because it has not alleged any act of infringement. Alcoa has not alleged that Alcan made, used, offered to sell, imported, or sold any product within the United States covered by any claims of the '639 patent.

4. Alcoa has not stated a claim for relief under 35 U.S.C. § 271(b) because it has not alleged that any of Alcan's customers engaged in acts of infringement. Alcan, therefore, could not have "actively induced" them to do so.

5. Alcoa's claims for infringement and active inducement of infringement fail for an additional reason: Alcan's 2056 alloy does not meet each limitation of any claim of the '639 patent. Based on Alcoa's prior actions and the positions it took both in the Patent and Trademark Office and in this Court, the claims of the '639 patent are limited to alloys (and methods of making alloys) in which the amount of zinc is far less than the amount indisputably present in 2056.

6. Alcan submits contemporaneously herewith: (i) Defendants' Memorandum of Law in Support of Their Motion to Dismiss; and (ii) Appendix of Materials Cited in Defendants' Motion to Dismiss.

WHEREFORE, there being no claim upon which Alcoa could obtain relief, Defendants respectfully request that the Court grant their motion and dismiss the Complaint as to all Defendants with prejudice.

ASHBY & GEDDES

/s/ Steven J. Balick

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Dated: August 15, 2006

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company, ALCAN ROLLED PRODUCTS –)	
RAVENSWOOD, LLC, a Delaware limited)	
liability company,)	
)	
Defendants.)	

ORDER

At Wilmington this _____ day of _____, 2006, having considered
Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted,

IT IS HEREBY ORDERED that Defendants' Motion is GRANTED and this lawsuit is
dismissed as to all Defendants with prejudice.

Chief Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 2006, the attached **DEFENDANTS'**
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
CAN BE GRANTED was served upon the below-named counsel of record at the address and in
the manner indicated:

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